

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4205 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

VS SANGHVAI

Versus

AREA DEVELOPMENT COMMISSIONER

Appearance:

MR PV HATHI for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/10/1999

ORAL JUDGEMENT

#. Annexure-A, the order of the State of Gujarat, Narmada Development Department, Sachivalaya, Gandhinagar, dated 4.2.87 is under challenge in this petition under which the petitioner, a Superintending Engineer, was ordered to be prematurely retired from the government services under Rule 161 of the Bombay Civil service Rules, 1959. Otherwise, the petitioner was due to retire (on superannuation) on 31st December 1989.

#. On 24th April, 1955, the petitioner entered in the services of P.W.D., Government of Saurashtra as Junior Engineer. In 1958, he was promoted as Deputy Engineer in the former State of Bombay. In February 1987, he came to be promoted as Executive Engineer in the Irrigation Department. On 26th February, 1986, he was further promoted as Superintending Engineer, Irrigation Department. He was adjudged suitable for promotion to the post of Superintending Engineer in the year 1983 but the result of selection was kept in sealed cover.

#. The learned counsel for the petitioner raised in all five contentions to challenge the legality, propriety and correctness of the impugned order. Firstly, it is contended that on true interpretation of clause (c)(ii)(i) of Rule 161(1)(aa), of the Rules, 1959, the petitioner could not have been prematurely retired as he was holding the rank of Superintending Engineer. Second contention is raised that there was no material available with the reviewing authority to form an opinion that it is in public interest to dispense with the services of the petitioner by resorting to the powers as conferred under Rule 161 of the Rules, 1959. Third contention is raised that the order is passed for extraneous and irrelevant consideration and is in fact an outcome of bias and prejudice entertained against the petitioner by higher officers of the Department. Fourth contention has been raised that no reasonable person could have formed an opinion that a person who was promoted in February 1986 after being selected by the Selection Committee in the year 1983 as Superintending Engineer can be said to be an officer whose continuation in services is against public interest. Lastly, it is the grievance that the Government has mechanically acted upon the recommendation of the reviewing committee which has travelled beyond its authority and was otherwise led away by the material which were non-existent under the rules or which can be said to be extraneous and irrelevant for labelling the petitioner as a dead wood. In support of the aforesaid contentions, the learned counsel for the petitioner placed reliance on the decisions of this court as well as of the Apex Court, the details of which are as under:

(1) 1999(1) GLH 193 - State of Gujarat v. S.C. Shah

(2) AIR 1998 (SC) 3058 - M.S. Bindra v. Union of India

(3) 37(2) GLR 6382 - C.N. Pancholi v. State of Gujarat

(4) 1989(SC) 2218

(5) 1992(SC) 1 - Baikunthanathdas & Anr. v. Chief
District Medical Officer.

#. On the record of this special civil application, from the side of respondent, their affidavit-in-reply is there. In para-6 of this reply affidavit, the details are given of adverse remarks which were communicated to the petitioner during the period mentioned therein. In para-11, the details are given of the departmental inquiries which have been initiated from time to time against the petitioner and the final order passed therein. Enclosed to this reply, the respondent filed annexure-I, i.e. the statement showing adverse and corrective remarks communicated to the petitioner from time to time.

#. From para-11 of the reply to the special civil application, I find that during the period 1978 to 1985, the petitioner was served with four chargesheets. In the first chargesheet, dated 22.7.78, the petitioner was exonerated under the order dated 6.1.81. In the chargesheet dated 20th October 1980, he was censured vide order dated 2.7.82. The third chargesheet is dated 6.1.82 in which also he was exonerated of the charges under the order dated 19.6.84. Then comes the last chargesheet dated 23.11.84, wherein an order has been passed on 8.11.85 and punishment has been given of stoppage of one increment for six months.

#. Now I may advert to the adverse and corrective remarks communicated to the petitioner from time to time. For the period from 23.2.77 to 31.3.78, adverse remarks which have been communicated to the petitioner are as follows:

- 1) The officer has an extremely casual and frivolous approach towards his work. He does not maintain good relation with fellow officers and has acquired a reputation of being uncooperative

For the period from 1.4.78 to 16.9.78, adverse remarks which have been communicated to the petitioner are as follows:

- 2) No, he has not done anything not worthy. He has given exaggerated report to show his efficiency

For the period from 17.4.79 to 31.3.80, adverse remarks

which have been communicated to the petitioner are as follows:

- 3) An intelligent but an average officer in delivery of goods.

An intelligent officer who does not show himself to deliver the good in time still tries to plead his case that the work is completed using other grounds.

He is an unmethodical and unsteady worker

For the period from 30.4.80 to 23.10.80, adverse remarks which have been communicated to the petitioner as as follows:

- 4) Sometimes he does so.

Needs to be more objective.

#. Against most of these adverse remarks he appears to have filed representation but the same were maintained. So for the period from 1.4.78 to 16.9.78, two items were stated to be fair but in one column it was reported that, "no he has not done anything noteworthy. He has given exaggerated report to show his efficiency". From this annexure, I find that these adverse remarks were not communicated to the petitioner. For the period from 16.9.78 to 18.12.78,, if we go by details, almost against all the columns, under item No.2, the work of petitioner was reported to be fair. Under column No.3, his work has been reported to be adverse but these remarks were not communicated to the petitioner. For the year 1978-79, I do not find anything adversely reported against the petitioner. In fact, his work was overall reported to be fair. Against the period 16th September 1978 to 18th December 1989, adverse remarks which are there were not communicated to the petitioner. For the year 1979-80, adverse remarks no doubt are there, the same were also communicated to the petitioner, and ultimately the same remained unchanged. These adverse remarks are as follows:

An intelligent but an average officer in delivery of goods.

An intelligent officer who does not show himself to deliver the good in time still tries to plead his case that the work is completed using other grounds.

He is an unmethodical and unsteady worker

For the period from 30.4.80 to 23.10.80, adverse remarks which are there read as under:

Sometimes he does so.

Needs to be more objective.

Then comes the period from 2.11.85 to 4.3.86, and the adverse remarks for this period are as under:

Good, but in some cases decisions are differed
and cases referred to higher officer.

It is found that in depth examination is not done
before proposals are finalized and submitted.

#. In 1977-78, the adverse remarks were there. So far as the period from 1.4.78 to 16.9.78, is concerned, remarks are not so adverse which justify the decision to order for his premature retirement. If we go by this period, his capacity for organization and to get work from subordinates was rated fair. Similarly, control over subordinates was again rated fair but under the head of self-assessment of his performance done by the officer, it is stated that, "no, he has not done anything noteworthy. He has given exaggerated report to show his efficiency". This cannot be taken to be so serious or adverse to the extent or gravity to which it has been given effect to. The adverse remarks for the period from 17th April 1979 to 31st March 1980, if we go by the same, I find that over all assessment has been made to be as, "an intelligent officer" but he is unmethodical and unsteady worker. For the period from 30th April 1980 to 23rd October, 1980, remarks were given under the heads, "whether he has exercised delegated powers or does he have a tendency to refer cases back for guidance?", it is remarked that "sometimes he does so" and under the heads, "quality of reporting. Does he correctly and objectively appraise the work of persons working under him?", it is stated that, "needs to be more objective". These appear to be only advisory remarks. Then comes the remarks for the period 2.11.85 to 4.3.86 under the head, " (a) capacity to take quick and sound decisions, and (b) does he keep abreast of the latest technical theory and practice?", remarks are, "(a) good, but in some cases decisions are differed and cases referred to higher officer, and (b) it is found that in depth examination is not done before proposals are finalized and submitted".

#. In the presence of these adversities in the service record, I find sufficient merits in the contention of the learned counsel for the petitioner that it cannot be said to be sufficient material to form an opinion for discontinuing of petitioner's services. It is true that in such matters, power of judicial review of this court is very very limited, but in a given case, the court can examine the matter whether really the order has been passed in a fair and impartial exercise of powers or is the outcome of some malafides or a device to oust the petitioner from services. If we go through the departmental inquiries, the charges are of remote past. On 2.7.82, he was censured. In 1984, no doubt, the penalty of stoppage of one increment was there but that also seems to be not very serious matter. The petitioner has been promoted to the post of Superintending Engineer where the criteria should have been proved merit and efficiency in February 1986. It is true that for this promotion, adverse material in service record of the petitioner does not stand washed off for the purpose of Rule 161 of the Rules 1959, but while considering the case of an officer for premature retirement, both his merits and demerits are to be considered and in case where in 1983 he was adjudged suitable for promotion and in 1986 that order was given effect to, it has to be given due credit and consideration but I do not find anything on the record of this special civil application whether this aspect has been considered or not. It is also true that uncommunicated adverse remarks can also be taken into consideration for the purpose of adjudging suitability of the officer for his retention in service in public interest but overall assessment of the matter has to be made and then an opinion has to be formed. In this case, I do not find anything from the record of the of the respondent that the petitioner's integrity was ever doubted or he was taken to be a corrupt officer. If on such minor things an officer is allowed to go on premature retirement and that too just few years before his superannuation, it certainly causes prejudice and adversely affects reputation in the service society. This premature retirement order has come within eleven months of his promotion as Superintending Engineer. At one point of time, before eleven months he was considered to be an officer fit for promotion for responsible post of Superintending Engineer and within eleven months, he has become useless officer and that too, to the extent to be chopped off or wedded out from the services. The record of the reviewing committee has not been produced for perusal of this court and in the absence of the same it is very difficult to find out what material is

considered by the committee.

##. Taking into consideration the totality of the facts of this case, the decision taken in this case prematurely retiring the petitioner cannot be said to be fair, impartial and reasonable. It cannot be said that the petitioner has totally become an officer of no use to the public services or that he has to be wedded out. This case is not in the category of cases where this power should have been exercised. Each matter has to be decided on its own facts and I am not considering it to be necessary to deal with all other contentions and authorities on which reliance has been placed by the learned counsel for the petitioner. As a result of the aforesaid discussion, this special civil application succeeds and the same is allowed and the order annexure-A of the State of Gujarat, Narmada Development Development, Sachivalaya, Gandhinagar, dated 4.2.87, is quashed and set aside. The petitioner shall be entitled for all consequential benefits following therefrom. The respondent-State is directed to pay Rs.2,000/= by way of costs of this petition.

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[sunil]